Rick Buell - IEP LANGUAGE: SITING REGS

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IEP LANGUAGE: SITING REGS Subject: CC: 'Steven Kelly' < steven@iepa.com>

PER THE COMMISSIONERS' REQUEST AT YESTERDAY'S MEETING, PLEASE FIND ATTACHED IEP'S PROPOSED LANGUAGE ON THE SITING REGULATION ISSUES DISCUSSED AT THE 9-19 BUSINESS MEETING. FAX COPIES ARE ALSO BEING SENT TO THE COMMISSIONERS. THANKS.

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ISSUE #1, AS IDENTIFIED AT THE 9-19-01 CEC BUSINESS MEETING

Comments: IEP respectfully suggests that the Commission's regulations regarding the powers of the chairman and the powers of the presiding members of siting committees should be amended to reflect changes to the Warren-Alquist Act set forth in SB 28X. Specifically, Section 6 of SB 28X included the following addition to Public Resources Code Section 25521: "Consistent with the requirements of this section, the commission shall have the discretion to determine whether or not a hearing is to be conducted in a manner that requires formal examination of witnesses or that uses other similar adjudicatory procedures." Three sections of the Commission's regulations should be amended as follows to reflect this new statutory language: Sections 1203, 1212, and *1718.5, as follows:*

1203. Powers of the Chairman

In addition to all other powers conferred by this article, the chairman or presiding member designated pursuant to Section 1204 shall have the power to:

(c) Regulate the conduct of the proceedings and hearings, including, but not limited to, disposing of procedural requests, admitting or excluding evidence, receiving exhibits, designating the order of appearance of persons making oral comments or testimony, and continuing the hearings, and the discretion to determine whether or not a hearing, or any portion thereof, is to be conducted in a manner that requires formal examination of witnesses or that uses other similar adjudicatory procedures.¹

Section 1212. Rules of Evidence

25521 (SB 28X, Section 6).

(c) Subject to the exercise of the lawful discretion of the presiding committee member as set forth in Section 1203(c), Eeach party shall have the right to call and examine witnesses, to introduce exhibits, to cross examine opposing witnesses present evidence and comment on any matters the presiding committee member determines to be relevant to the issues in the proceeding, and to rebut evidence against such party.²

§1718.5. Prehearing Conferences; Hearing Order.

The committee shall hold one or more prehearing conferences with all parties and interested agencies to establish procedures, identify issues, and set schedules for adjudicatory or nonadjudicatory hearings on the notice or application.

(d) The presiding member, in consultation with other committee members, shall prepare a hearing order to guide the hearings on the notice or application. The order shall set forth the schedule and procedures for hearings, indicate the order of presentation of the parties and interested agencies, and identify the issues to be addressed in the hearings, and identify issues that may be resolved without hearing or formal examination of witnesses.³

¹ Editor's Note: The language added is from the recent amendment to Section 25521 (SB 28X, Section 6).

² Editor's Note: This change is required to make this regulation consistent with SB 28X. ³ Editor's Note: The language added is based on the authority set forth in the recent amendment to Section

ISSUE #2, AS IDENTIFIED AT THE 9-19-01 CEC BUSINESS MEETING

Comment: IEP continues to believe that there should be no restrictions or noticing requirements related to communications between parties, including staff. That is, there should be no restrictions or noticing requirements affecting communications between non-decision makers. Such an open communication policy would bring the Commission into conformity with the practices of every other energy regulatory body known to IEP.

However, given the apparent lack of consensus, IEP offers the following compromise with two major elements. First, communications between parties, including staff, would be unrestricted and not subject to noticing requirements up to and including the date of the prehearing conference. That is, free and open communication occurs during the entire discovery/informal portion of the proceeding. Second, after the Prehearing Conference, parties could continue to communicate with certain limitations. Specifically, meeting that resulted in stipulations or other joint agreements would be reduced to writing and filed and served on all parties. These filings could be made part of the hearing record for the committee and the Commission's consideration, but would not be binding on the decision makers.

Section 1710 Noticing Procedures; Setting of Hearings, Presentations, Conferences, Meetings, Workshops, and Site Visits.

- (a) All hearings, presentations, conferences, meetings, workshops, and site visits scheduled by order of the commission or a committee⁴ shall be open to the public and noticed as required by law.
- (b) Meetings between one or more parties, including staff, for the purpose of exchanging information or discussing procedural and substantive issues in the siting case may occur at the discretion of the parties, subject to the following requirements:
 - (1) Up to and including the day of the prehearing conference held pursuant to Section 1718.5, the parties may gather information regarding the application in any lawful manner and meetings between parties and staff, may occur at the discretion of the parties without reporting or noticing requirements; and
 - (2) After the prehearing conference held pursuant to Section 1718.5, meetings between parties and staff, may occur at the discretion of the parties without reporting or noticing requirements; provided, however, that if any such meetings result in two or more parties entering into a stipulation, a joint statement of facts, or a joint statement of issues related to any issue in the case, the parties agreement shall be reduced to writing and filed and served on all parties within three days of the meeting.

(such as staff PSA workshops) that are noticed by order of the Committee.

⁵ Editor's Note: The terms "joint statement of facts" and "joint statements of issues" are taken directly from 20 CCR 1718 regarding Prehearing Conferences where parties attempt to define the scope of issues for adjudication.

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⁴ Editor's Note: This language is intended to cover both committee meetings and certain staff meetings (such as staff PSA workshops) that are noticed by order of the Committee

[Note: Re-number and re-letter remainder of section to reflect additions above]

(h) Nothing in this section shall prohibit an applicant from informally exchanging information or discussing procedural issues with the staff without a publicly noticed workshop.

ISSUE #3, AS IDENTIFIED AT THE 9-19-01 CEC BUSINESS MEETING

Comment: IEP has no comments on this issue related to Intervenor's rights and duties.

ISSUE #4, AS IDENTIFIED AT THE 9-19-01 CEC BUSINESS MEETING

Comment: IEP believes that the concept of (1) deference to an expert agency in that agency's area of expertise is not inconsistent with (2) the staff's fulfillment of its statutory responsibilities. Accordingly, IEP offers the following suggested additions to Commissioner Laurie's proposed new section 1714.5(d):

Section 1714.5 Agency Comments on an Application; Purpose and Scope ***

(d) Comments and recommendations submitted to the commission pursuant to this section shall be given great deference by the commission staff, consistent with staff's performance of its statutory responsibilities, so as to avoid a duplication of effort and resources. The commission shall adopt protocols for compliance with this subsection.

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